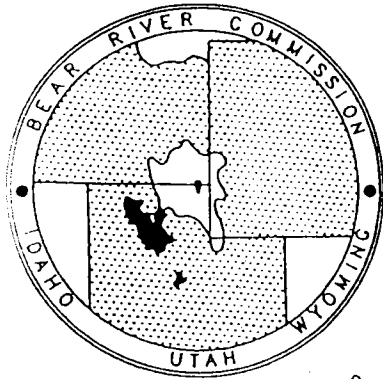


Karl - Norm  
Hal

# BEAR RIVER COMMISSION

106 West 500 South, Suite 101  
Bountiful, UT 84010-6232  
(801) 292-4662  
(801) 524-6320 (fax)



## MEMORANDUM BR02-2

TO: Management Committee  
FROM: Jack A. Barnett, Engineer-Manager  
SUBJECT: MONTHLY REPORT-December 2001  
DATE: January 10, 2002

JAN 15 2002

Department of Water Resources

### COMMISSION MEMBERS

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### ENGINEER-MANAGER

Jack A. Barnett  
Suite 101  
106 West 500 South  
Bountiful, UT 84010

Attached you will find two tables. The first is the Professional Services Time sheet that we have provided to the Management Committee each month with this report. The second table is a newly created table that we plan to use to account for time spent on the EPA grant effort and on water quality efforts in general. As to the first table, you will see that we spent little time for the Commission in December which helped to reduce the time over the CTR. We are now 70 hours, after one half of the contract year, over the CTR. You will note, however, a new column in the table. In the middle of the table is a water quality time column. You can note that almost 13 hours of the 70 hours over the CTR can be attributed to the addition of water quality time.

We are moving ahead with the EPA grant efforts and this will add hours to this column in the months ahead. This week I am working with the Water Quality Committee to select a contractor from three RFP responses. Hence, this effort should soon be moving ahead in earnest. As you know, of the \$30,000 grant awarded by the EPA, the Commission reserved out \$5,000 to assist in administering the grant and in actually helping with the grant activities. Hence, when the grant is completed this December we will need to be able to show how we have spent at least \$2500 in grant administration, as well as an additional \$2500 in assisting with the grant. Additionally, the EPA required that we show \$1579 worth of Commission in-kind contribution to the grant efforts over and above the \$5000 we have reserved.

In order to properly track the Commission staff's efforts with regards to the EPA grant and the in-kind contribution, we have created the attached spreadsheet titled EPA Grant/Water Quality Time. You will note that the period for this spreadsheet is from the awarding of the grant in October of 2001 through December 31, 2002 when we anticipate that the grant efforts will conclude. On this spreadsheet we will be able to track and report to the Commission and potentially to the EPA, if required, Commission staff time related to the administration of the grant, work assisting in the grant efforts, as well as general water quality efforts of the Commission. These hours, then, are converted to a monthly Engineer-Manager equivalent pursuant to the terms of our contract and then cumulative hours and costs by category are shown at the right of the spreadsheet.

In the past, we have reported to the Management Committee simply our total hours expended on Commission efforts each month. Hence, the time shown on the Professional Services Time sheet has included in the past water quality efforts. Because of the creation of the spreadsheet to track the EPA grant expenditures, all water quality time is tracked on the first spreadsheet. In order then to bring those hours forward pursuant to our Commission contract, we have modified the attached Professional Services Time sheet by adding another column which brings forward the total time spent on water quality efforts. In order to properly account for our contract with the Commission, we have then added the EPA \$5000 into our contract with the Commission divided over the 15-month period of the EPA grant. Hence, you will note that our time required each month, pursuant to our contract, had been 40 hours per month and beginning in October 2001 and continuing through December 31, 2002 our contract obligation to the Commission has increased to 43.23 hours each month. Obviously the Commission's efforts with respect to water quality items have in years past and probably will continue to exceed the 3.23 hours per months allocated under the EPA grant and, in fact, we have committed to exceed this amount in our in-kind contribution. Nonetheless, we view the EPA as providing potentially \$5000 worth of reimbursement to the Commission for time that, at least in part, would have probably been spent on water quality efforts. At the end of this year we should be better able to tell the Management Committee how much of our time is spent on water quality issues.

Should you have any questions at all regarding the tracking of the grant and water quality effort from a budgetary standpoint, please don't hesitate to call us. We do not plan to provide the second table to the Management Committee each month but the accounting will be available should you desire it.

Now, to other matters, on December 6, Don attended a meeting in Logan between PacifiCorp and the modeling technical leads from Utah and Idaho. The purpose of the meeting was to review water distribution in the Lower Division during the 2001 irrigation season and in preparation of a meeting between PacifiCorp and the Bear River Water Users Association. There is a difference of opinion between PacifiCorp and the Bear River Water Users Association regarding the appropriate accounting for storage releases from Bear Lake pursuant to the Settlement Agreement (see attached two letters from Randy Budge). PacifiCorp wanted to meet with the state technical modeling leads and the Commission so that it could understand from the states the calculations and allocations from last season in advance of the meeting with the Bear River Water Users Association.

To help crystalize the issues in 2001, the net water released from Bear Lake was 244,500 af. This is calculated by taking Bear Lake outflow gage minus inflow from Rainbow and Dingle minus the Mud Lake inflow amounts prescribed by the Dietrich Decree. PacifiCorp turned off the pumps, taking the position that the Agreement only allowed the pumping of 245,000 acre-feet. Of that water released from Bear Lake, 8,900 af went to cover the transit losses prescribed in the Dietrich Decree. An additional 14,400 af discharged past Cutler during the irrigation season, of which approximately 8,000 af were associated with a couple of storm events and 6,000 af comes from a continuous flow of between 20 and 25 cfs below the power plant at the Collinston gage. This left the 2001 water year with 221,500 af of storage water delivery measured at the various headgates. The main contention of the irrigators is that the allocation identified in the Settlement Agreement they believe is to be delivered to the headgates. This would mean that in 2001 they could have received a full allocation of 245,000 acre-feet instead of the 221,500 acre-feet allowed by PacifiCorp. PacifiCorp maintains that the allocation is total storage release from the lake regardless of its allocation downstream.

The Commission, of course, is not a party to the Settlement Agreement and has not taken a position on this issue but we do believe that it is important that the irrigators and PacifiCorp resolve their differences as to the definition of the storage release prior to this irrigation season. If we were

**Memorandum BR02-2**

**January 10, 2002**

**Page 3**

ever to get into a water emergency without the resolve of this issue, the Commission would be drawn into the middle of the fray. We will keep the Management Committee apprised of the discussions as they continue.

Next week I plan to attend a Bear River Water Quality Task Force meeting in Brigham City. On the near horizon, work needs to be done on a report from the TAC on ground-water depletions in the Lower Division and on the last biennial report. The snowpack on the Bear River totaled more than normal in December, but it has now dropped to where it is just below 100%.

np  
attachments

# Bear River Commission Professional Services Time

FY 2001 - 2002

Month	Regular Time Spent During Month			Equivalent Water Quality Time	Equivalent Total	Year To Date Time	Year To Date Time Required	Year To Date Hours Over Or Under
	Engineer- Manager	Staff Engineer	Technician					
July	44.25	4.00	0.00	0.00	47.05	47.05	40.00	7.05
August	112.00	65.50	0.00	0.00	157.85	204.90	80.00	124.90
September	22.00	14.50	0.00	0.00	32.15	237.05	120.00	117.05
October	26.75	1.25	0.00	7.13	34.76	271.81	163.23	108.58
November	21.50	17.00	0.00	1.75	35.15	306.96	206.45	100.50
December	1.75	10.25	0.00	3.81	12.74	319.69	249.68	70.01
January								
February								
March								
April								
May								
June								
<b>YTD Total</b>	<b>228.25</b>	<b>112.50</b>	<b>0</b>					
<b>Equivalent</b>		<b>78.75</b>	<b>0</b>					
<b>% of Total</b>	<b>71%</b>	<b>25%</b>	<b>0%</b>					

# EPA Grant/Water Quality Time

October, 2001 - December, 2002

Month	Grant Administration Time			Grant Time			General WQ Time			Monthly Equivalent Total Time (hours)		Cumulative Equivalent Total Time (hours)		Allocation of Grant (\$)		Cumulative Costs General WQ Expenses (\$)		Total (\$)	
	Engineer-Manager (hours)	Staff Engineer (hours)	Tech/Clerical (hours)	Engineer-Manager (hours)	Staff Engineer (hours)	Tech/Clerical (hours)	Engineer-Manager (hours)	Staff Engineer (hours)	Tech/Clerical (hours)	Monthly Equivalent Total Time (hours)	Cumulative Equivalent Total Time (hours)	Administration (\$)	Grant (\$)	Administration (\$)	Grant (\$)	Administration (\$)	Grant (\$)	Administration (\$)	Grant (\$)
October	6.25		2.75							7.13	7.13	\$736.54	\$0.00	\$736.54	\$0.00	\$736.54	\$0.00	\$736.54	\$0.00
November		2.50								1.75	8.88	\$917.32	\$0.00	\$917.32	\$0.00	\$917.32	\$0.00	\$917.32	\$0.00
December	3.25		1.75							3.81	12.69	\$1,310.90	\$0.00	\$1,310.90	\$0.00	\$1,310.90	\$0.00	\$1,310.90	\$0.00
January																			
February																			
March																			
April																			
May																			
June																			
July																			
August																			
September																			
October																			
November																			
December																			
Total	9.50	2.50	4.50	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00								
Equivalent	9.50	1.75	1.44	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00								
% of Total	75%	14%	11%	ERR	ERR	ERR	ERR	ERR	ERR	ERR	ERR								

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October 26, 2001

**Transmitted Via Fax and U.S. Mail:**Jody Williams  
Kruse, Landa & Maycock  
Eighth Floor, Bank One Tower  
50 West Broadway  
Salt Lake City, Utah 84101-2034  
Fax: 801-359-2000 • 0388Re: *PacifiCorp - Bear Lake Operations*

Dear Jody:

To confirm our October 22 phone conversation, the Bear River Water Users Association ("Irrigators") desires to schedule a meeting with PacifiCorp at a convenient time to address various questions and concerns with respect to the following Bear Lake operational matters:

1. The proper method for calculating the delivery of storage water to the contract holders under the Bear Lake Settlement Agreement. This issue and the Irrigators' position is set forth in my letter to you of September 11, 2001.
2. Whether PacifiCorp and the Irrigators should participate with Bear Lake Watch and the various other Bear Lake interest groups they represent in a joint study of Bear Lake water quality, provided Bear Lake Watch would withdraw its request to the Army Corps in the pending dredging permit proceedings for an Environmental Impact Statement (EIS). The Irrigators continue to be very concerned about EIS requests which might delay issuance of badly-needed dredging permits and/or result in an uncontrolled analysis and result which could restrict or impair PacifiCorp's Bear Lake operations and the delivery of storage water. The Irrigators feel there may be a possibility of reducing these risks by participating in a water quality study defined to be lower in scope and smaller in scale.

03 P. 03

Jody Williams  
October 26, 2001  
Page 2

3. The Irrigators desire to thoroughly understand, provide input and perhaps make change recommendations regarding PacifiCorp's policies and operating criteria governing Bear Lake storage and releases at elevations above 5918. This would address the decision, timing and magnitude of fall and winter releases during flood control operations and how soil moisture conditions are factored in.
4. Under PacifiCorp's Structural Realignment Proposal (SRP), what changes will be made to the current ownership and operational responsibilities for Bear Lake storage water rights and the Camp Lifton facilities? Will these assets be owned and managed by the generation company, the service company, or the Idaho distribution company?

The upcoming Bear River Commission meeting typically brings us together, but likely will not afford sufficient time to address these issues. Therefore, we would suggest arranging a separate meeting in Smithfield. Please advise.

Sincerely,

RANDALL C. BUDGE

RCB:rr  
cc: Bear River Water Users Association Board  
D. Brent Rose

**received**  
9-17-01

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SENDER'S E-MAIL ADDRESS [rcb@racinclaw.net](mailto:rcb@racinclaw.net)

September 13, 2001

**VIA FAX TO (801) 359-3954 AND U.S. MAIL**

Jody Williams  
Kruse, Landa & Maycock, L.L.C.  
Eighth Floor, Bank One Tower  
50 West Broadway (300 South)  
Salt Lake City, Utah 84101-2034

*RE: Pacificorp -- Bear Lake Storage Contracts*

Dear Jodi:

We are writing as counsel for the Bear River Water User's Association and its canal company and individual members who will be referred to collectively as the "Irrigators". The Irrigators are the holders of all Pacificorp contracts for supplemental storage water from Bear Lake. The purpose of this letter is to identify and set forth our position with regard to issues in which we apparently have a serious disagreement with Pacificorp. These issues deal with the proper method of calculating storage water deliveries under the Bear Lake Settlement Agreement (the "Agreement"). We suggest that there is an urgent need to address these issues without delay in order to facilitate a resolution well in advance of the next irrigation season.

At Pacificorp's meeting with the Irrigators in Logan on August 23, 2001, the Irrigators voluntarily agreed to reduce their current storage water use by an average of 50% across the board in order to prolong water delivery. This substantial reduction demonstrated the strength and unity of the Association and cooperation by the Irrigators in dealing with severe drought conditions in an effort to insure that growing crops can mature and be harvested through the month of September without exceeding the Irrigators' respective contract limitations. Bear River Canal Company's contribution was truly magnanimous given the fact that it has no contract limitation. An important point to note is that the decision of the Irrigators to voluntarily curtail this year, and particularly Bear



September 13, 2001

Page 2

River Canal Company's decision, was in large part prompted by the Irrigators' deep concern with regard to and desire to be supportive of PacificCorp's efforts in securing the necessary dredging permits pursuant to its pending applications. As set forth below, the decision was not made because the Irrigators believed PacificCorp was limited in its authority to continue to deliver water out of Bear Lake, but rather because of the circumstances surrounding the pending dredging permit applications and the Irrigators' respective contract limitations.

Recently, PacificCorp has asserted two interpretations of the Agreement which the Irrigators believe are in error. The first issue is PacificCorp's contention that the Agreement establishes a 245,000 A.F. maximum annual delivery of storage water from Bear Lake to all contract holders. The second issue is PacificCorp's contention that the "annual allocation" of storage water is measured at the Lifton point of delivery into the outlet canal, as opposed to the Irrigators' respective points of delivery along the Bear River downstream. The Irrigators' position on these two issues is set forth below.

#### ISSUE RE 245,000 A.F. DELIVERY LIMITATION

Consistent with the Bear River Compact, there is nothing in the Agreement which restricts the delivery of water to the Irrigators when the level of water in Bear Lake, on March 1, is above the irrigation reserve elevation of 5914.7 feet. (A copy of the Agreement is attached for convenient reference.) The only limitations that apply at lake levels above the irrigation reserve are those set forth in the Irrigators individual contracts with PacificCorp. This year, because the lake level was above the irrigation reserve on March 1, 2001, the Agreement imposed no delivery limitations.

Paragraph 4 of the Agreement provides for a "Bear Lake Storage Allocation and Recovery Proposal" ("Recovery Proposal"), consisting of two pages attached to the Agreement, which was "approved by the Irrigators, the Bear Lake Group and by PacificCorp as its established policy and guideline for the operation and management of Bear Lake." Paragraph 6 of the Agreement expressly provides that the Recovery Proposal is a voluntary plan for allocating water in times of shortage, and "*nothing in this Settlement Agreement shall be construed as an abandonment or forfeiture of any appropriated, contract or other rights belonging to the parties.*" Column 5 of the Recovery Proposal sets forth the annual allocation schedule, which begins at a 100% allocation of 230,000 acre-feet at elevation 5914.7 feet, and reduces progressively for each one foot of drop in lake elevation. Further, footnote 2 to the "Annual Allocation" column in the Recovery Proposal includes the following language:

(2) The "Annual Allocation" represents the total, estimated quantity of water available to be delivered to holders of contracts with PacificCorp. The maximum historic delivery of 245,000 A.F. (1961)

September 13, 2001

Page 3

shall be available at all elevations above the "irrigation reserve". The reduced allocations available at each elevation below the "irrigation reserve" of 5914.7 shall be subject to the following conditions: \*\*\*\*.

The second sentence of footnote (2) imposes no agreed-to limitation and is nothing more than informational dicta. It simply refers to the maximum historic delivery of 245,000 A.F. The provision says nothing about the Irrigators being bound to that historic delivery amount. It cannot limit the Irrigators' contract entitlements above the irrigation reserve because no recovery proposal is in effect at higher elevations; and besides, the Agreement, by its terms, cannot be construed as an abandonment of any contract right of the Irrigators. PacifiCorp's reading that the referenced 245,000 A.F. imposes a maximum limitation is totally inconsistent with and contrary to the Annual Allocation column of the Recovery Proposal which lists 230,000 A.F. at elevation 5914.7 as a 100% allocation. The third sentence of footnote 2 makes it clear that reduced allocations only apply at all elevations below the 'irrigation reserve. Moreover, the stated 100% allocation of 230,000 A.F. equates almost exactly with the sum equal to the total of the maximum deliveries contracted for under all of the contracts (using, for illustrative purposes, a historic delivery quantity to Bear River Canal Company).

Based on the foregoing, the Irrigators strongly maintain that the Agreement imposes no storage water delivery restriction during the irrigation season when, on March 1, the level of water in Bear Lake is above the irrigation reserve at elevation 5914.7 feet; and, further, that above such elevation, the only storage water delivery restrictions that exist are those set forth in the Irrigators' respective contracts.

#### ISSUE RE MEASUREMENT OF WATER DELIVERY

Bear Lake supplemental storage water to which the Irrigators are entitled under their respective contracts is required, pursuant to the terms of their respective contracts, to be delivered at the Irrigators' respective points of diversion and delivery along the Bear River. Due to the fact that nothing in the Agreement is to be construed as an abandonment or forfeiture of any contract right, it is the Irrigators' position that under the Agreement, storage water pursuant to the annual allocation schedule set forth in Column 5 of the Recovery Proposal, is to be delivered at the Irrigators' respective points of diversion and delivery along the Bear River and thus be measured and quantified for purposes of the Agreement at those points, less the delivery losses specified in the Dietrich Decree. It is inconsistent and entirely illogical to measure the "annual allocation" at the Lifton point of delivery to the outlet canal. Such would effectively force the Irrigators to unfairly absorb the results of the Pacificorp operational decisions, such as releases below Cutler, which result in no irrigation water or benefit to Irrigators. As indicated in footnote 2, the annual allocation represents water "to

September 13, 2001

Page 4


be delivered to holders of the contracts with PacifiCorp," and cannot include water that is never delivered to Irrigators for operational reasons over which only Pacificorp has control.

It is important that we reach an understanding on these issues, particularly in light of the fact that curtailments under the Agreement are certain to begin and will severely impact Irrigators next year absent a return to conditions of sufficient water supply. We believe that it is extremely important for Pacificorp and the Irrigators to be consistent and harmonious in their interpretation of the Agreement. To that end, we urge Pacificorp to reconsider its position as stated at the August 23, 2001, meeting. The interpretation as suggested by the Irrigators above is not only consistent with the express language, spirit and intent of the Agreement, but the fact is that this interpretation poses no hardship or burden on Pacificorp.

Jodi, we will leave this matter to you to take up with the appropriate Pacificorp officials. As always, we are happy to meet to work through these issues and eliminate any misunderstandings or conflicts.

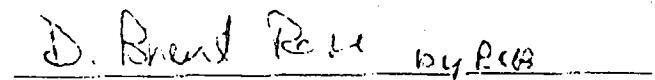
Sincerely,

RACINE, OLSON, NYE, BUDGE  
AND BAILEY, CHARTERED



RANDALL C. BUDGE,  
Attorneys for Bear River Water Users Association

CLYDE, SNOW, SESSIONS & SWENSON, P.C.

  
D. BRENT ROSE,  
Attorneys for Bear River Water Users Association

RCB/hp

cc: BRWUA Board of Directors  
Will Atkin - Utah Division of Water Rights  
Bill Ondechen - Idaho Department of Water Resources

# STORAGE SUMMARY (IN 1000 ACFT)

FROM B.L. RELEASES  
ADJUSTED AS PER DECREE

FROM WATER RIGHT ACCTING PROGRAM

	USED BY IRRIGATORS	PASSED CUTLER	STORED FLOW LOSSES	TOTAL	MONTHLY AVG DATA EXCEPT 2000, 2001
1961	-	-	-	-	247.8
1977	-	-	-	-	224.9
1988	-	-	-	-	195.0
1990	181.0	9.4	7.5	197.9	190.6
1992	194.4	8.9	7.5	210.8	214.2
1994	204.5	10.5	8.3	223.0	219.4
2000	187.0	11.5	8.1	214.6	214.7
2001	221.5	14.4	8.9	244.8	244.5